

## **REMARKS**

This is a full and timely response to the outstanding final Office Action mailed June 6, 2006. Reconsideration and allowance of the application and pending claims are respectfully requested.

### **I. Claim Rejections - 35 U.S.C. § 103(a)**

As has been acknowledged by the Court of Appeals for the Federal Circuit, the U.S. Patent and Trademark Office ("USPTO") has the burden under section 103 to establish a *prima facie* case of obviousness by showing some objective teaching in the prior art or generally available knowledge of one of ordinary skill in the art that would lead that individual to the claimed invention. *See In re Fine*, 837 F.2d 1071, 1074, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). The Manual of Patent Examining Procedure (MPEP) section 2143 discusses the requirements of a *prima facie* case for obviousness. That section provides as follows:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure.

In the present case, the prior art does not teach or suggest all of the claim limitations, and there is no suggestion or motivation in the prior art to modify the references to include those limitations, as is discussed in detail below.

**A. Rejection of Claims 17-24**

Claims 17-24 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over *Rydell* (“Rydell,” U.S. Pat. No. 5,613,942) in view of *Bates, et al.* (“Bates,” U.S. Pat. No. 6,174,318). Applicant has canceled claims 17 and 19-22, and therefore the rejection of these claims has been rendered moot. Applicant respectfully traverses the remaining rejections.

Through this response, Applicant has amended claim 23, which now reads as follows (emphasis added):

A retrieval device comprising:  
a three-dimensional basket having at least three legs, each leg having a forward end that is coupled at a junction of the basket; and  
***a first actuator configured to extend a first and a second leg and to simultaneously retract a third leg of the basket, such that the junction of the basket is displaced rearward and the first and second legs are displaced away from each other to facilitate maneuvering the basket around an object.***

Applicant respectfully asserts that the rejection of claim 23 is rendered moot as a result of having been drawn against the claim in another form. Furthermore, Applicant notes that the cited references do not teach or suggest all of the limitations of Applicant’s claim. For example, neither the *Rydell* reference nor the *Bates* reference discloses “a first actuator configured to extend a first and a second leg and to simultaneously retract a third leg of the basket, such that the junction of the basket is displaced rearward and the first and second legs are displaced away from each other,” as required by Applicant’s claim 23.

*Rydell* does not disclose “a three-dimensional basket having at least three legs, each leg having a forward end that is coupled to a junction”. Because *Rydell* does not disclose a basket having legs, *Rydell* necessarily does not disclose “a first actuator configured to extend a first and a second leg and to simultaneously retract a third leg, such that ... the first and second legs are displaced away from each other”. Additionally, *Rydell* does not disclose a basket having a

junction, and therefore Rydell necessarily does not disclose a first actuator that is configured “such that the junction of the basket is displaced rearward”.

Bates discloses a basket having legs, and in some embodiments the basket has a junction. Bates; Fig. 3. However, Bates does not disclose “a first actuator configured to *extend* a first and a second leg and to *simultaneously retract* a third leg of the basket, such that the junction of the basket is displaced rearward”. Instead, in Bates at least one of the legs is independently movable. As a result, some of the legs remain stationary while other legs are moved. Bates; col. 1, ln. 49-59. For example, in Fig. 3 of Bates, the leg 28 is extended but the remaining legs 30, 32, 34 remain stationary, such that the junction is *not* displaced rearward. In Figs. 4A-4B of Bates, the legs 28 and 30 are extended while the legs 32 and 34 remain stationary, as indicated by the change in position of the elongate member 22 without a corresponding change in position of the elongate member 23. Likewise, in Fig. 5B-5C of Bates, the elongate member 22 is extended to extend the legs 28 and 30, while the elongate member 23 remains stationary such that the legs 30 and 32 are not extended or retracted. For at least these reasons, Applicant asserts that claim 23 is not obvious in view of Rydell and Bates, and respectfully requests that the rejection be withdrawn.

Regarding claims 18 and 24, Applicant asserts that these claims are not obvious for at least the reason that these claims depend from claim 23. In summary, it is Applicant’s position that a *prima facie* for obviousness has not been made against Applicant’s claims. Therefore, it is submitted that each of the claims is patentable and that the rejection of these claims should be withdrawn.

## **II. Double Patenting Rejections - Obviousness-type Double Patenting**

Claims 17-32 have been rejected under the doctrine of obviousness-type double patenting as being unpatentable in view of claims 1-31 of U.S. Patent No. 6,652,537 (“the ‘537 patent”).

Although Applicant does not concur that claims 17-32 are unpatentable in view of claims 1-31 of the ‘537 patent, Applicant, in the interest of expediting issuance of a patent, has submitted herewith a terminal disclaimer that disclaims any portion of term for a patent issuing from the present application that will extend beyond the term of the ‘537 patent. Applicant therefore respectfully requests that the rejection be withdrawn.

## **III. Canceled Claims**

Claims 1-17, 19-22, and 25-32 have been canceled from the application without prejudice, waiver, or disclaimer. Applicant reserves the right to present these canceled claims, or variants thereof, in continuing applications to be filed subsequently.

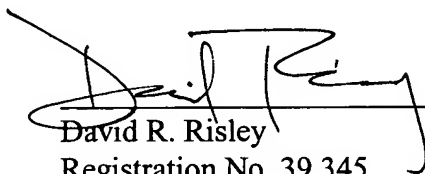
## **IV. New Claims**

Claims 33-40 have been added into the application through this Response. Applicant respectfully submits that these new claims describe an invention novel and unobvious in view of the prior art of record and, therefore, respectfully requests that these claims be held to be allowable.

### CONCLUSION

Applicant respectfully submits that Applicant's pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

  
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9-6-06  
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